

Wass



August 22, 2007

John Robertus, Executive Officer
San Diego Regional Water Quality Control Board
9174 Sky Park Court, Suite 100
San Diego CA 92123-4340

2007 AUG 23 A 9:35

SAN DIEGO REGIONAL
WATER QUALITY
CONTROL BOARD

RE: TENTATIVE ORDER NO. R9-2007-0002 – NPDES PERMIT REISSUANCE FOR SOUTH ORANGE COUNTY

Dear Mr. Robertus:

We appreciate this opportunity to respond to the revised draft Tentative Order No. R9-2007-0002, the Fourth-Term NPDES Permit for South Orange County. The City is pleased to see some of the revisions proposed, as well as clarification provided in the response to some comments. However, a few issues remain, and some new ones were created by the revision language. Some of our concerns may be over-reading the staff's intent with the permit language, but we all know that staff members change and ultimately the words in the document are what will be legally interpreted. Therefore, we also want to express our concurrence with the potentially serious legal interpretive issues that are and have been raised by the County of Orange as Lead Co-permittee in its letters of April 4 and August 22, 2007.

Rather than repeat arguments made by the County, we have tried in our comments below to identify our key practical concerns where the currently proposed permit language will be counter-productive for on-the-ground implementability. Our comments below are presented by page order of appearance in the document. To expedite revisions, we have attempted to be very specific in terms of our suggested re-wordings.

Finding 7, page 14, has been somewhat clarified but is still prone to misinterpretation because the original retained language could be construed to prohibit what the clarified language provides for. The clarifying language states that waters of the U.S. may be used for waste treatment (subject to pretreatment) or conveyance facilities subject to federal 404 authorization and WDRs pursuant to CWC 13260, and "diversion from waters of the U.S. to treatment facilities and subsequent return to waters of the U.S. is allowable, provided that the effluent complies with applicable NPDES requirements." But the

original language (which has thus far been retained) states that using the waterbody for waste treatment or conveyance to a treatment system would be “tantamount to accepting waste assimilation as an appropriate use for that water body”, and “Federal regulations at 40 CFR 131.10(a) state that *in no case* [emphasis added] shall a state adopt waste transport or waste assimilation as a designated use for any waters of the U.S.” Given the clarifications, it does not seem that these two sentences retained from the original language are relevant – and indeed are more confusing than supportive of the clarified Finding. We suggest you delete them.

New Finding 9, page 14, includes statements that FETDs “without sufficient treatment processes” may discharge effluent that “does not support all designated beneficial uses”, and that future FETD discharges will be expected to meet “all applicable water quality standards.” FETDs, as typically deployed, are composed of technological unit processes or unit process sequences targeted at a limited number of specific constituents. Ultraviolet treatment to reduce bacteria, for example, typically requires at least two pre-treatment steps to filter out gross debris and fine particulates in order to improve clarity so the UV can be effective. However, this sequence would not typically remove dissolved constituents. Removal of salts, phosphorus, dissolved metals, etc. (which can naturally occur in South Orange County creeks at levels exceeding WQOs, and none of which are reliably reduced to WQOs by alternative “natural” processes) each requires a different and expensive set of space- and energy-consuming technological unit processes. Finding 9, in stating that FETD discharges must meet “all applicable WQOs”, implies that each and every FETD must be designed as an extended multi-parameter sequence of processes that removes *every* constituent of concern. This is not a reasonable or realistic requirement where constituents are naturally-occurring (e.g. salinity in Salt Creek), or where resources at a given FETD site (available space, energy supply, and/or funding priorities) are constrained, or for constituents where source control is not locally implementable (e.g. copper from brake pads) and for which there is no technological treatment that can reliably achieve WQOs that is not cost-prohibitive (e.g., selenium). The consequence of requiring that all FETDs treat *everything to WQOs* would be to make FETDS effectively *impracticable* in almost all cases. This approach is not in the best interests of the public or the environment – because where there is no practical alternative to a FETD, the pollutants of special concern would remain untreated. The more proper requirement would be that a FETD must improve water quality for at least one constituent parameter of specific local concern, and that it must not degrade water quality for other parameters. The permittees need and deserve flexibility in determining how and where FETDs are most effectively deployed in their iterative solution sequence, and the RWQCB should not be dictating the permittees’ manner of compliance. We request that the unnecessary and inappropriate language in Finding 9 about “insufficient processes” and “FETD discharges being expected to meet all applicable water quality standards” be removed. The following, more concise language is proposed as appropriate and sufficient to support the valid current purposes of this Finding:

“Copermitees have implemented and have proposed to continue implementing FETDs (facilities that extract, treat and discharge to receiving waters) to improve water quality relative to specific constituent(s) of local concern. Monitoring of

FETDs is necessary to confirm adequate ongoing maintenance, characterize their effectiveness, and ensure that FETDs do not add to pollutant loads or create conditions of erosion in receiving waters.”

New Prohibition B-5.a, page 18, prohibits the discharge of FETD effluent with pollutants in greater concentration than the influent. No properly-operated FETD would discharge a greater concentration of its primary target pollutant(s). However, many types of FETDs (including those already in place which have been funded by the State) produce some type of more-concentrated discharge. For example, intermittent backwashing supplements filter-media replacement as necessary to prevent clogging for particulate-filter pretreatment units. Backwashing produces a low-volume, short-duration discharge with a higher concentration of a secondary pollutant of less concern (e.g., sediment). Backwash discharge typically is discharged back upstream into the influent cycle if diversion to a sewer treatment plant is infeasible. This practice is consistent with the definition and intent of allowing “Bypass not exceeding limitations”, as referenced from 40 CFR 122.41(m) in the draft Permit on page B-2 at 1(g)(2). The overall *load* reduction of both primary-target and secondary pollutant(s) should be the concern of over-riding significance. Imposition of this Prohibition as currently worded would immediately render existing FETDs non-compliant and would cause substantial unjustified challenges and expense for future FETDs. This prohibition should be re-worded to state that discharged effluent must not contain greater *pollutant loads* than the influent.

Section 1.h.(5)(a)(i), page 36, lists specific measures to disconnect impervious areas from receiving waters on large projects. This sentence should include “or other equivalently effective measures” to allow for other creative ideas in addition to those listed.

Section 1.h(5)(a)(ii), page 37, requires the establishment of “buffer zones and setbacks for channel movement.” In the case of a redevelopment project, land uses would already be established adjacent to the channel, such that allowing for “channel movement” would in most cases be infeasible. This sentence should be modified to refer only to *new* developments. Also – we request that you please add a definition of “geomorphically-referenced channel design techniques” to Section C, Definitions in order to clarify what you are requiring.

Section F.3, page 75, requires submittal of a “Business Plan” identifying long-term funding strategies and a shopping list of other specific components. Although it may be appropriate to ask Permittees to describe the evolution of their long-term funding strategies in conjunction with their annually-submitted fiscal analysis, the other specific components listed have been and are already being submitted to RWQCB in the JURMPs (a.k.a. Local Implementation Plans or LIP) and/or Annual Reports, such that this requirement is entirely duplicative and unnecessary. As a separate submittal, the “Business Plan” will just take up review time and shelf space for RWQCB staff. There is already a requirement for the co-permittees to re-submit their revised JURMPs and WURMPs in Year 1 so the RWQCB will have a compiled set including the accumulated

annual revisions from the past 5 years, which should include all the components requested. We request that the "Business Plan" provision be deleted.

Attachment E, New C.4.b and d, Page 19 to 20, Monitoring provisions for FETDs should include the specific constituent(s) of local concern which the FETD is designed to remove, and other water quality parameters which are likely to be adversely impacted directly by a specific FETD. These parameters, and appropriate monitoring frequencies, should vary according to the specific unit processes in each FETD project. Appropriate monitoring requirements therefore should be described generally in the Permit as determined individually at the time a FETD is proposed, rather than prescribed as a detailed specific list of parameters and monitoring frequencies. It is not justifiable to prescribe blanket monitoring requirements for possible watershed-sourced pollutants that may be completely unrelated to the magnitude, purposes, and potential effects of the FETD unit itself. Please keep in mind that at this point in the long-term development of the Copermittees' urban runoff programs, some FETDs are or will be small-scale and/or experimental/temporary in nature, such that the extensive monitoring currently prescribed may be drastically disproportional to the FETD's purpose and will discourage Copermittees from pursuing much-needed BMP effectiveness studies. We request that paragraph C.4.e be deleted, and that paragraphs C.4.b and C.4.d and their subparagraphs either be removed in their entirety, or specifically limited to apply on a case-by-case basis only as relevant to assess FETD effectiveness and impacts.

We would appreciate your consideration of these comments in making additional revisions to the Permit language. Please do not hesitate to contact me at npalmer@ci.laguna-niguel.ca.us or (949)362-4384 for clarification or discussion.

Sincerely,



Nancy Palmer
Senior Watershed Manager